

United States Department of Justice
Office of the United States Trustee
1100 Commerce Street, Room 976
Dallas TX 75242 (214)767-8967
Mary Frances Durham for the United States Trustee

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

In re:	§	
	§	
Toli, Inc.	§	Case No: 10-220274-RLJ-7
	§	
Debtor	§	Chapter 7

Hearing: No Hearing Requested

Report of Disputed Election

Comes now, the United States Trustee for the Northern District of Texas, and files this
his Report of Disputed Election pursuant to Fed. R. Bankr. Proc. 2003.

Background

1. On April 21, 2010, Toli, Inc. (the “Debtor”) filed a voluntary chapter 11 petition. There was no committee in the case.
2. On October 15, 2010, a creditor filed a motion to convert the case to chapter 7 which the Court granted on November 12, 2010.
3. The United States Trustee appointed Kent Ries to serve as chapter 7 trustee. At the first meeting of creditors on December 20, 2010, Raymond Teague and Auer Corporation requested the election of a trustee. The United States Trustee convened a meeting to conduct the election at that time.

The Election

4. At approximately 4:00 p.m. on December 20, 2010, the Debtor appeared through Harish Patel and Debtor's counsel, Bill Kinkead. David M. Jones of Amarillo appeared on behalf of Debtor's ownership. Johnie Patterson appeared on behalf of Raymond Teague and Auer Corporation ("Auer"). Also present were Kent Ries and Joseph Parsons.
5. Mr. Patterson provided the United States Trustee with executed proxy forms (Official Form 11B) authorizing him to vote on behalf of Raymond Teague and Auer.
6. Raymond Teague filed Proof of Claim No. 1 in the amount of \$2,986,793.84. The Debtor filed a written objection to this claim prior to the election.
7. Auer filed Proof of Claim No. 2 in the amount of \$25,221,693.79. The Debtor filed a written objection to this claim prior to the election.
8. There were no other claims filed in the case at the time of the election.
9. Schedule F states that Auer has a contingent, unliquidated and disputed claim against the Debtor in the amount of \$31,000,000.00. The Schedules list no other creditors other than attorneys for Auer with no separate amounts due to the attorneys.
10. Through counsel, Raymond Teague and Auer requested the election of David R. Jones of Houston as chapter 7 trustee in this case.
11. The Debtor's counsel opposed the election of a chapter 7 trustee in the case and disputed the claims of Raymond Teague and Auer, and disputed the right of Raymond Teague and Auer to vote.

Basis for Designation as "Disputed" Election

12. Schedule F identifies Auer's claim as "contingent," "unliquidated," and "disputed."
13. The Debtor filed objections to both Raymond Teague's proof of claim and Auer's proof of claim. The Debtor filed an amended Schedule B including claims against Raymond

Teague and Auer in the amounts of \$2,986,793.84 and \$25,221,693.79 respectively, as assets of the Debtor.

14. The Debtor orally objected to Raymond Teague's claim and Auer's claim against the Debtor. Through counsel, the Debtor stated that the Default Judgment on which Raymond Teague and Auer base their claims is set for a hearing in bankruptcy court on the Debtor's motion to set aside the Default Judgement.
15. Raymond Teague and Auer voted for the election of David R. Jones of Houston¹ to serve as chapter 7 trustee. There were no other votes cast.
16. The United States Trustee reports that because the claims held by the two creditors are disputed, it would appear that Raymond Teague and Auer were not entitled to vote in an election of a trustee under 11 U.S.C. §702(a).
17. Were Raymond Teague and Auer permitted to vote in an election under 11 U.S.C. §702(a), more than 20% of claims were represented by the two, and 100% of the vote was for David R. Jones of Houston to serve as chapter 7 trustee.
18. Pursuant to Fed. R. Bankr. Proc. 2003(d)(2), unless a motion for the resolution of the dispute is filed within 14 days of the filing of this report, the interim trustee, Kent Ries, shall serve as trustee in the case. Pending the disposition by the court of this disputed election, Kent Ries shall continue to serve as trustee.

December 21, 2010

William T. Neary
United States Trustee

/s/ Mary Frances Durham
Mary Frances Durham, TX #740144
United States Department of Justice
Office of the United States Trustee
1100 Commerce Street, Room 976

¹ David R. Jones, 1000 Main Street, 36th Floor, Houston, TX 77002, Phone Number (713) 226-6653.

Dallas TX 75242 (214) 767-1241
Fax: (214) 767-8971
Maryfrances.durham@usdoj.gov

Certificate of Service

I hereby certify that I mailed a copy of this document to the following persons by first class, United States mail, postage pre-paid on December 21, 2010:

Walker & Patterson, P.C.
P.O. Box 61301
Houston, TX 77208

Auer Corporation
C/O Terry B. Joseph
2000 Bering Drive, Suite 700
Houston, TX 77057

Toli, Inc.
109 E. 15th Street
Shamrock, TX 79079

/s/ Mary Frances Durham
Mary Frances Durham